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C O N F I D E N T I A L SECTION 01 OF 04 KATHMANDU 001116

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SUBJECT: NEPAL: MEETING LEAHY AMENDMENT CONDITIONS ON HUMAN RIGHTS

REF: A. 05 KATHMANDU 1659
1B. 05 KATHMANDU 1570

Classified By: Ambassador James F. Moriarty. Reasons 1.4 (b/d).

Introduction

1. (C) There is a strong case for certifying that the requirements of the Leahy Amendment for U.S. Foreign Military Financing (FMF) have been met for Nepal given the significant progress the Government of Nepal (GON) has made in restoring human rights. Resumption of FMF is also in U.S. national security interest given the importance of such assistance to Nepal's democratic transition. The People's Movement and restoration of Parliament in April 2006 marked the end of a decade-long insurgency and launched a peace process that has resulted in a major improvement in the human rights situation. Expectations have been raised that long-standing human rights issues, such as caste-, ethnic-, and gender-based discrimination will be addressed. While many challenges remain, Post assesses that the GON has met the first and third of three Leahy Amendment conditions for Nepal: restoration of civil liberties and movement toward a clear timetable to restore multi-party democracy. In our view, the GON has also begun good faith efforts to meet the second condition: protection of human rights. Moreover, continued withholding of FMF would hamper our ability to respond to worst-case scenarios -- including a return to conflict -- and limit our capacity to encourage a professional Nepal Army committed to working under civilian control.

Renewed Focus on Human Rights Since April 2006

12. (SBU) The April 2006 People's Movement resulted in the end of King Gyanendra's rule; a decade-long Maoist insurgency gave way to a peace process intended to move Nepal toward stability and democracy. The transition to peace has led to significant improvements in the country's human rights situation and public dialogue on important human rights issues that lay at the root of the conflict, such as ethnic and caste-based exclusion. All the agreements signed during the course of negotiations over the past year, including the

Ceasefire Code of Conduct and the Comprehensive Peace Agreement (CPA), have included human rights commitments. The same is true of the Interim Constitution adopted in January 2007. The challenge will be implementing these commitments and remedying past abuses. The new Ministry of Peace and Reconstruction has also begun to formulate the terms of reference for a truth and reconciliation commission.

Nepal Essentially Meets Leahy Conditions

¶3. (SBU) Based on our review of the Leahy Amendment, Post assesses that the GON, including its security forces, has met the first and third of the three Leahy Amendment conditions for Nepal: restoration of civil liberties and movement toward a clear timetable to restore multi-party democracy. In our view, the GON has also begun good faith efforts to meet the second criterion: protection of human rights.

First Criterion: Restored Civil Liberties

¶4. (SBU) Since the April 2006 People's Movement, or Jana Andolan II, and restoration of Parliament in April 2006, the GON has made significant progress in restoring civil liberties to Nepali citizens. Under the monarchy, the King imposed extensive restrictions on civil rights, including freedom of speech and the press, freedom of peaceful association, and freedom of movement. When King Gyanendra seized executive authority in February 2005, he imposed even more severe restrictions on civil liberties. The King dismissed multi-party government and arrested politicians,

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human rights defenders, student activists and journalists. More than 3,000 persons were detained. A law imposed by the King prohibited speech and publications that threatened the sovereignty and integrity of the "Kingdom." Since the reinstatement of Parliament, these restrictions have been lifted. The GON has allowed freedom of speech, the press, and association, and has placed no restrictions on movement, academic activities or cultural events. The CPA reiterates the GON's commitment to civil liberties, as does the Interim Constitution. The only remaining restriction on movement applies to certain senior officials who face allegations of misconduct during the King's rule and the April People's Movement.

Second Criterion: Protection of Human Rights

¶5. (SBU) There has also been a significant improvement in the GON's protection of human rights since the reinstatement of Parliament and initiation of the peace process. Nepal's security forces under King Gyanendra, particularly the then Royal Nepalese Army, were accused of widespread human rights abuses. Throughout 2005 and early 2006, the King increasingly used excessive force to control peaceful opposition. Torture, as well as disappearances, occurred frequently. With the cessation of hostilities, security force violations have reduced significantly. The Nepal Army has been confined to its barracks (a condition of the November 2006 Agreement on the Management of Arms and Armies). An Army Bill adopted by the Parliament in September 2006 addresses internal reform of the Army, implements measures to ensure adherence to human rights norms, and sets up mechanisms for accountability. A Police Act is currently being drafted. Both the NA and the Nepal Police (NP) have established human rights cells down to the unit (brigade) level to promote human rights and to investigate cases of abuse. During 2006, the NA investigated 102 cases of abuse involving 163 individuals.

Human Rights Protection Bodies Forming

¶6. (C) The GON has generally permitted the National Human Rights Commission and the Office of the UN's High Commissioner for Human Rights (OHCHR) to make unannounced visits to prisons and detainees in army and police custody. A number of domestic and international human rights groups operate without government restriction and are able to investigate and publicize their findings. In May 2006, the GON appointed a Commission of Inquiry to investigate human rights violations committed during the April People's Movement, and in early June 2006, the Home Ministry established a Disappearances Committee. The Ministry of Peace and Reconstruction, which was created April 1, 2007, when the new Interim Government was established, has started to formulate terms of reference for a truth and reconciliation commission.

Human Rights Challenges Remain

¶7. (SBU) While the human rights situation has improved markedly since the end of the insurgency, three fundamental human rights challenges remain. First, human rights abuses, including abduction, extortion, and forced recruitment, primarily by Maoist and Maoist-affiliated groups such as the Young Communist League (YCL), but also by ethnic extremists, continue unabated across the countryside in direct violation of the November peace accords. Second, there has not been sufficient progress in investigating and remedying past abuses by the security forces and the Maoists, including disappearances. OHCHR has complained that the NA has not been forthcoming with necessary records for investigation. Ensuring that a truth and reconciliation process is instituted and other human rights protection bodies are operating and effective will be vital to this end as the peace process proceeds. The National Human Rights

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Commission, which is currently without Commissioners due to political party haggling, will also need to be re-energized. Third, the GON has been ineffective in utilizing the NP and APF to restore public order. The Police have been ill-prepared and ill-equipped to provide security, resulting in a law-and-order crisis and credible allegations of the use of excessive force to quell violent protests in Nepal's Terai region in early 2007. At the same time, the Police have proven disinterested in responding to violations of the law by Maoist organizations.

Third Criterion: Timetable for Multi-Party Democracy

¶8. (SBU) In November 2006, the governing Seven-Party Alliance (SPA) and the Maoists signed the CPA followed by an Agreement on the Management of Arms and Armies. The agreements provided for the cessation of hostilities, the cantonment of Maoist People's Liberation Army (PLA) combatants, relegation of the Nepal Army to its barracks under UN monitors, Constituent Assembly (CA) elections by June 2007, and a national-level interim power sharing arrangement between the SPA and the Maoists. Despite continued Maoist violations of their commitments and violent rioting in early 2007 by marginalized groups in Nepal's southern Terai, significant progress has been made toward achievement of these tasks. The Interim Constitution was promulgated in January 2007. The NA has remained in its barracks, and with UN assistance, over 30,000 Maoists have been registered and placed in cantonments. A vetting process to screen out non-combatants is expected to begin shortly. An interim parliament and an interim cabinet were constituted in January and April respectively, reflecting a power-sharing arrangement between the SPA and the Maoists. The Constituent Assembly election was delayed from June 2007 because of political debate over an electoral system approach and disruptions caused by Terai violence. However, the SPA and the Maoists have agreed to hold the election by mid-December. A credible CA election will mark the next milestone in

Nepal's road to multi-party democracy.

..... and the Case for a National Security Waiver

¶9. (C) Despite this progress in the peace process, there are few signs that the Maoists will participate responsibly in a multi-party democracy. To date, their participation in the peace process has appeared simply a tactic toward reaching their ultimate goal of state domination; a return to conflict cannot be ruled out. To the Maoists, the Nepal Army is the primary obstacle in their path to power. Once their first goal, a republic, is achieved, they are likely to focus their efforts on weakening and dismembering the Nepal Army. In recent months, Maoist leaders have called for downsizing of, and integration of PLA combatants into, the NA. U.S. FMF support will be vital to protect against a Maoist takeover and encourage security sector reform efforts, ensuring a professional Army committed to working under civilian control. Security sector reform in turn will be a key ingredient to put Nepal on a path to stability and democracy, vital to protect U.S. interests in the region. FMF funding would also assist in further preparing the Nepal Army to participate in global peace operations. We hope to see the number of troops contributed by Nepal to peacekeeping operations, currently at 3,500, double or triple in the next few years.

Comment

¶10. (C) Nepal's peace process remains fragile and human rights challenges continue. That said, Nepal has made enormous strides since the end of the insurgency and initiation of the peace process in April 2006. In our view, the GON has met two of the three Leahy Amendment conditions for FMF for Nepal and has begun good faith efforts to meet the third. If it is not possible to certify that Nepal has

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met the Leahy conditions, we would recommend a national security waiver. Now is the time to fully engage with Nepal and bring all our resources to bear to assist with the country's democratic transition. The provision of FMF to Nepal is vital to provide us continued leverage with the GON and Nepal Army to encourage progress on human rights protection and security sector reform. Support to the NA also ensures we are simultaneously preparing responsibly for worst-case scenarios that would have a detrimental impact on U.S. interests in the region.

MORIARTY